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Wong Chim Yiam v Bar Malaysia

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(IM)(NCVC)-1842–09 OF 2017
ROHANA YUSUF, VERNON ONG AND HARMINDAR SINGH JJCA
14 NOVEMBER 2018

C *Civil Procedure — Proceedings — Committal proceedings — High Court convicted and sentenced appellant for contempt of court — Appellant appealed against his conviction and sentence — Whether personal service of cause papers mandatory — Whether charge defective as offence not particularised — Rules of Court 2012 O 52 r 4(4) & O 1A*

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The appellant was at all material times practising as an advocate and solicitor. His appeal was against the decision of High Court sitting in Kuala Lumpur which found him guilty of contempt of court and sentenced to three months' imprisonment. At the High Court, the learned judge considered and rejected
E the appellant's argument that he had no notice of the committal proceedings or of the cause papers. On 10 October 2014, the High Court judge in a Civil Suit No 24NCVC-854–06 of 2014 ('the 854 Suit') decided that the plaintiff in the High Court case ('Lian Meng Wah') needed to apply for leave from the court to initiate any suit against the defendants and that he would be in contempt of
F court if he failed to comply. Lian Meng Wah then filed a similar suit against the defendants in a Civil Suit No 24NCVC-297–02 of 2015 ('the 297 Suit') for essentially the same prayers as in another suit in Kuala Lumpur High Court No 24NCVC-560–04 of 2015 ('the 560 Suit'). The High Court then struck out the 297 Suit and instructed the plaintiff to withdraw the 560 Suit or
G otherwise he was deemed to be in contempt of court. Lian Meng Wah failed to do so as ordered by the High Court. The court records as per the notes of proceedings showed that the committal proceedings were commenced against Lian Meng Wah and the appellant but both failed to turn up despite being served and warrants of arrest were issued against them. The learned judge
H found that the appellant was aware at all times of the committal proceedings and had studiously avoided being served personally with the cause papers which were finally served on his firm and received by his legal clerk who was ordered to be cross-examined on her two affidavits filed. The learned judge concluded that the appellant had constructive notice if not actual notice of the
I committal proceedings. The learned judge also rejected the appellant's argument that the nature of the offence was not particularised in the cause papers as the facts as set out in the cause papers were sufficient and adequate for the appellant to understand the nature of the offence alleged against him and he was not prejudiced in any way. The learned judge found that the respondent

had proved beyond reasonable doubt that the conduct of the appellant, by continuing to act for Lian Meng Wah in the 560 Suit despite having knowledge of the 397 Order. It was allegedly done with the intention to interfere with the proper administration of justice and constituted contempt of court. In deciding the case, the court focused on two issues ie firstly, no service of the cause papers and secondly, on the issue of defective charge.

Held, setting aside the order of the High Court and allowing the appeal with costs of RM5,000 subject to payment of allocator:

(1) The cause papers were not served on the appellant. The application for the dispensation of service was only made by the respondent at the hearing of the committal application. It ought to be made prior to the hearing date. There was no grounds of warranting the granting of dispensation of service. In the absence of any evidence showing that the appellant was evading service of process, the order of dispensation of service should not been granted since it was made so late and in a committal proceeding. The fact that the appellant had knowledge of the contempt proceedings made no difference. The requirement for the personal service of the cause papers on the appellant was a mandatory requirement. This defect was fatal and by itself was a sufficient ground to warrant appellate intervention in setting aside the learned judge's order (see paras 22 & 25–26).

(2) The question of whether the charge was defective turned on the construction of notice of application, the O 52 statement and the respondent's affidavit in support. Neither the O 52 statement nor the affidavit in support filed by the respondent contained any particulars as to how, when and in what manner the appellant aided and abetted Lian Meng Wah in disregarding the 297 Order. The allegations peppered throughout the affidavit in support were not specific and devoid of the necessary facts as against the appellant. In such circumstances, there was no sufficient material to ensure that the appellant knew clearly what was alleged against him. The appellant was not afforded every opportunity to answer the serious allegations levelled against him (see para 28).

[Bahasa Malaysia summary

Perayu pada setiap masa matan beramal sebagai peguambela dan peguamcara. Rayuannya adalah terhadap keputusan Mahkamah Tinggi yang bersidang di Kuala Lumpur yang mendapatinya bersalah kerana menghina mahkamah dan dijatuhkan hukuman penjara tiga bulan. Di Mahkamah Tinggi, hakim yang bijaksana telah mempertimbangkan dan menolak hujah perayu bahawa dia tidak mengetahui tentang prosiding komital atau kertas kausa tersebut. Pada 10 Oktober 2014, hakim Mahkamah Tinggi dalam Guaman Sivil No 24NCVC-854–06 Tahun 2014 ('Guaman 854') telah memutuskan bahawa plaintif dalam kes Mahkamah Tinggi ('Lian Meng Wah') hendaklah

memohon kebenaran daripada mahkamah untuk memulakan apa-apa guaman terhadap defendan-defendan dan bahawa dia akan menghina mahkamah jika gagal untuk mematuhi. Lian Meng Wah kemudian telah memfailkan guaman yang serupa terhadap defednan-defendan dalam Guaman Sivil No 24NCVC-297–02 Tahun 2015 ('Guaman 2015') untuk permohonan yang sama sepertimana dalam guaman satu lagi di Mahkamah Tinggi Kuala Lumpur 24NCVC-560–04 Tahun 2015 ('Guaman 560'). Mahkamah Tinggi kemudian membatalkan Guaman 297 dan mengarahkan plaintif menarik balik Guaman 560 itu jika tidak dia akan dianggap telah menghina mahkamah. Lian Meng Wah telah gagal berbuat sebagaimana diperintahkan oleh Mahkamah Tinggi. Rekod mahkamah sebagaimana nota prosiding menunjukkan bahawa prosiding komital telah dimulakan terhadap Lian Meng Wah dan perayu tetapi kedua-duanya telah gagal hadir di mahkamah meskipun telah disampaikan dan waran tangkapan telah dikeluarkan terhadap mereka. Hakim yang bijaksana mendapati bahawa perayu menyedari pada setiap masa tentang prosiding komital itu dan telah mengelak daripada disampaikan secara peribadi dengan kertas kausa tersebut yang akhirnya dapat disampaikan ke atas firmanya dan diterima oleh kerani guamannya yang telah diperintahkan agar diperiksa balas berhubung dua afidavit yang difailkan olehnya. Hakim yang bijaksana membuat kesimpulan bahawa perayu mempunyai notis konstruktif jika bukan notis sebenar tentang prosiding komital tersebut. Hakim yang bijaksana juga menolak hujah perayu bahawa jenis kesalahan itu tidak diperincikan dalam kertas kausa kerana fakta sebagaimana yang dinyatakan dalam kertas kausa mencukupi dan memadai untuk perayu memahami jenis kesalahan yang dikatakan terhadapnya dan dia tidak diprejudiskan dalam apa cara pun. Hakim yang bijaksana mendapati bahawa responden telah membuktikan melampaui keraguan munasabah bahawa perbuatan perayu, dengan terus bertindak untuk Lian Meng Wah dalam Guaman 560 meskipun mempunyai pengetahuan tentang Perintah 397. Ia dikatakan telah dilakukan dengan niat untuk campur tangan dengan pentadbiran keadilan yang wajar merupakan penghinaan mahkamah. Dalam memutuskan kes, mahkamah memberi fokus kepada dua isu iaitu pertama, tiada penyampaian kertas kausa dan kedua, berhubung isu pertuduhan yang cacat.

Diputuskan, mengetepikan perintah Mahkamah Tinggi dan membenarkan rayuan dengan kos sebanyak RM5,000 tertakluk kepada bayaran alokatur:

(1) Kertas kausa tidak disampaikan ke atas perayu. Permohonan untuk pengecualian penyampaian hanya dibuat oleh responden semasa perbicaraan permohonan komital. Ia patut dibuat sebelum tarikh perbicaraan. Tiada alasan yang mewajarkan pengecualian penyampaian itu. Ketiadan apa-apa keterangan yang menunjukkan bahawa perayu mengelak proses penyampaian, perintah untuk pengecualian penyampaian tidak patut diberikan oleh kerana ia lambat dibuat dan

dalam prosiding komital. Fakta bahawa perayu mempunyai pengetahuan tentang prosiding komital tidak membezakan apa-apa. Keperluan untuk penyampaian kediri kertas kausa ke atas perayu adalah keperluan mandatori. Kecacatan ini adalah memudaratkan dan ia dengan sendirinya adalah alasan yang mencukupi untuk mewajarkan campur tangan mahkamah rayuan untuk mengetepikan perintah hakim yang bijaksana (lihat perenggan 22 & 25–26).

(2) Persoalan sama ada pertuduhan itu cacat merujuk kepada pembuatan notis permohonan, kenyataan A 52 dan afidavit sokongan responden. Kenyataan A 52 mahupun afidavit sokongan yang difailkan oleh responden tidak mengandungi apa-apa butir-butir tentang bagaimana, bila dan dalam cara apa perayu membantu dan bersubahat dengan Lian Meng Wah untuk mengelak Perintah 297. Dakwaan yang dinyatakan dalam afidavit sokongan tidak spesifik dan tiada fakta yang diperlukan terhadap perayu. Dalam keadaan tersebut, tiada bahan yang mencukupi untuk memastikan bahawa perayu mengetahui dengan jelas apa yang didakwa terhadapnya. Perayu tidak diberikan peluang untuk menjawab dakwaan serius yang dibuat terhadapnya (lihat perenggan 28).]

Notes

For a case on committal proceedings, see 2(4) *Mallal's Digest* (5th Ed, 2017 Reissue) para 8222.

Cases referred to

Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors [1986] 2 MLJ 193; [1986] CLJ Rep 58, SC (refd)

Arthur Reginald Perera v The King [1951] AC 482 (refd)

B (JA) (an infant), In re [1965] Ch 1112, Ch D (refd)

Sivalingam a/l S Ponniah & Ors v Balakrishnan a/l S Ponniah & Ors [2003] 3 MLJ 353; [2003] 6 CLJ 412, HC (refd)

Tan Sri G Darshan Singh v Tetuan Azam Lim & Pang [2013] 5 MLJ 541; [2013] 1 CLJ 1060, CA (refd)

Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors [2012] 3 MLJ 458; [2012] 2 CLJ 849, FC (refd)

Tay Siew Kiat (t/a Chop Soon Loong) v Wan Leong Chai (t/a Thye Guan Hing) [2004] 3 MLJ 49, HC (refd)

Taylor v Roe [1893] WN 14, Ch D (refd)

Tiger Powerhitz Sdn Bhd v Guinness Anchor Marketing Sdn Bhd [2003] 1 MLJ 314, HC (refd)

Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal [1995] 3 MLJ 549, SC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 13
Federal Constitution art 126
Rules of Court 2012 O 1A, O 2 rr 1, 2, 3, O 45 r 7(2)(b), (3), O 52, O 52 rr 3(2), 4, 4(3), (4)

Appeal from: Civil No 24NCVC-297–02 of 2015 (High Court, Kuala Lumpur)

Tan Kinv Tat (Low Peck Lim with him) (KC Yap & Partners) for the appellant.
Asim Ng (Fahri & Co) for the respondent.

Vernon Ong JCA:

INTRODUCTION

[1] The appellant was at all material times practising as an advocate and solicitor. His appeal is against the decision of the High Court sitting in Kuala Lumpur which found him guilty of contempt of court and sentenced to three months' imprisonment.

[2] The background facts have been comprehensively set out in paras [4]–[14] of the High Court grounds of judgment and are reproduced below:

> 4. On 10 October 2014, SM Komathy JC in Kuala Lumpur High Court Civil Suit No 24NCVC-854–06 of 2014 (*the 854 Suit*) made these orders against LMW:
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> (i) that he is a vexatious litigant;
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> (ii) that he needs to apply for leave from the court to initiate any suit against the plaintiffs (D1–D6 in this originating summons); and
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> (iii) that he will be in contempt of court if he failed to comply.
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> 5. On 27 February 2015, LMW filed a similar suit against D1–D6 vide Kuala Lumpur High Court Civil Suit No 24NCVC-297–02 of 2015 (*the 297 Suit ie the present suit*) for essentially the same prayers as in another suit, Kuala Lumpur High Court No 24NCVC-560–04 of 2015 (*the 560 Suit*) which was filed on 15 April 2015.
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> 6. On 25 May 2015, this court had struck out the 297 Suit without liberty to file afresh and made two further orders:
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> (i) that the plaintiff withdraw the 560 Suit on/or before 26 June 2015; and
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> (ii) if the plaintiff fails to withdraw the 560 Suit within that deadline, he is deemed to be in contempt of court.
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> *(the 297 Order)*

7. LMW was present when the 297 Order was made. However on 26 June 2015, he did not turn up in court nor did he withdraw the 560 Suit as ordered by this court.

8. On 18 August 2015, LMW applied for a restraining order vide encl 25 in the 560 Suit against the defendants from enforcing the orders.

9. LMW remains a vexatious litigant as per the order SM Komathy JC.

10. By the virtue of the fact that LMW failed to withdraw the 560 Suit on or before 26 June 2015, he is clearly in contempt of court in respect of the 297 Order.

11. On 12 January 2016, Noraini J, had dismissed LMW's 560 Suit (encl 1) and also struck out LMW's application in encls 25 and 28 therein.

12. On 13 January 2016, LMW filed yet another application (encl 63) and served the sealed notice of application and the affidavit in support dated 13 January 2016 on the defendants. Enclosure 63 was struck off on 15 April 2016.

13. The court records, as per the notes of proceedings, show that when these committal proceedings were commenced against LMW and WCY, both had failed to turn up despite being served and warrants of arrest were issued against them.

14. Till today, LMW remains at large as the warrant of arrest has yet to be executed whilst the warrant of arrest against WCY was executed on 23 January 2017.

FINDINGS OF THE HIGH COURT

[3] At the High Court, the learned judge considered and rejected the appellant's argument that he had no notice of the committal proceedings or of the cause papers. The learned judge found that the appellant was aware at all times of the committal proceedings and had studiously avoided being served personally with the cause papers which were finally served on his firm and received by his legal clerk who was ordered to be cross-examined on her two affidavits filed. The learned judge concluded that the appellant had constructive notice if not actual notice of the committal proceedings.

[4] The learned judge also rejected the appellant's argument that the nature of the offence had not been particularised in the cause papers as the facts as set out in the cause papers are sufficient and adequate for the appellant to understand the nature of the offence alleged against him and he was not prejudiced in any way.

[5] The learned judge accordingly found that the Malaysian Bar (the respondent in this appeal) had proved beyond reasonable doubt that the conduct of the appellant, by continuing to act for LMW in the 560 Suit despite having full knowledge of the 297 Order had aided and abetted LMW in contumaciously flouting the 297 Order. This was done with the intention to interfere with the proper administration of justice and constitutes contempt of court.

A SUBMISSION OF PARTIES

[6] In his oral submission before us, learned counsel for the appellant sought to attack the learned judge's decision on the following grounds: (i) that the charge against the appellant was defective; (ii) that there was undue delay in filing the contempt proceedings; (iii) that service of the committal papers is bad; and (iv) that the charge against the appellant was not proved beyond reasonable doubt.

[7] On the first point, it was argued that para [6] of the O 52 r 3(2) statement did not set out the facts fairly or contain any particulars as to how the appellant encouraged or failed to prevent LMW from committing contempt of court in respect of the 297 Order (*Tan Sri G Darshan Singh v Tetuan Azam Lim & Pang* [2013] 5 MLJ 541; [2013] 1 CLJ 1060 (CA)). The 297 Order only required LMW to withdraw his suit against the respondent in another high court and it did not involve the appellant (*Tay Siew Kiat (t/a Chop Soon Loong) v Wan Leong Chai (t/a Thye Guan Hing)* [2004] 3 MLJ 49). Further, the penal notice endorsed on the copy of the 297 Order only gave notice to LMW informing LMW of the consequences if LMW neglects to obey the 297 Order. No penal notice whatsoever was given to the appellant.

[8] Secondly, learned counsel argued that the 297 Order required LMW to withdraw the 560 Suit on or before 26 June 2015. However, the respondent only initiated committal proceedings against the appellant a third party on *4 November 2016*, one year and four months after the 297 Order. There was no explanation for the delay by the respondent. As such, the delay has prejudiced the appellant and the committal proceedings should have been dismissed (*Tiger Powerhitz Sdn Bhd v Guinness Anchor Marketing Sdn Bhd* [2003] 1 MLJ 314).

[9] The third point relates to service. Learned counsel for the appellant argued that it is not disputed that the committal cause papers were never served personally on the appellant; instead, they were only served on a clerk at the appellant's office. As such, the mandatory requirement for personal service under O 52 r 4(3) was not complied with and service was therefore bad in law and the committal proceedings should have been dismissed (*Tiger Powerhitz*; *Sivalingam a/l S Ponniah & Ors v Balakrishnan a/l S Ponniah & Ors* [2003] 3 MLJ 353; [2003] 6 CLJ 412).

[10] Lastly, it was argued that the respondent failed to state in what manner the appellant's conduct amounted to a contempt of court and there was no evidence produced by the respondent to show that the appellant had acted in aiding and abetting LMW to disobey the 297 Order. The respondent's assertion that the appellant was the solicitors for LMW is a bare assertion

without any evidential basis. On the evidence before the court, the respondent had failed to prove the charge against the appellant beyond reasonable doubt.

[11] In reply, learned counsel for the respondent conceded that the committal papers were not served personally on the appellant because they had a hard time serving the cause papers on the appellant. As such, the respondent had made an oral application for dispensation of service pursuant to O 52 r 4 of the Rules of Court 2012 ('the ROC 2012') at the hearing of the committal application. It was also argued that the learned judge was justified in finding that the appellant was evading service of process even though there was no affidavit evidence on the appellant evading service of process. Learned counsel also argued that the charge against the appellant clearly stated that the appellant should be committed for abetting and assisting LMW in wilfully and deliberately disregarding the 297 Order. Further, the O 52 statement had adequately set out the grounds on which the appellant's committal is sought and an affidavit verifying the facts relied on. The appellant was at all material times well aware of the 297 Order.

CONTEMPT OF COURT

[12] Contempt of court has been defined by the Federal Court as any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere with or prejudice parties, litigants, or their witnesses during the litigation (*Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458; [2012] 2 CLJ 849 (FC)).

[13] Contempt of court may be constituted by acts of omissions and commissions, such as failure to obey a judgment or order of the court to scandalising the court itself. To constitute contempt of court, there must be involved some act or writing published calculated to bring a court or judge of the court into contempt or to lower his authority or something calculated to obstruct or interfere with the due course of justice or the lawful process of the courts (*Arthur Reginald Perera v The King* [1951] AC 482 (PC)).

[14] The court has power to punish any contempt of itself (art 126 of the Federal Constitution; s 13 of the Courts of Judicature Act 1964). A contempt of court is punishable because of the necessity of maintaining the dignity and respect towards the court. The power to punish for a contempt is exercised to vindicate the court's dignity (see *Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 at p 195; [1986] CLJ Rep 58 at p 61 (SC)).

[15] Contempt of court may be classified into two categories. The first

A category relates to specific conduct for contempt for breach of a particular court order. The second category is wider in scope as it relates to a more general conduct for interfering with the due administration or the course of justice (*Tan Sri Dato' (Dr) Rozali Ismail*).

B BURDEN AND STANDARD OF PROOF

[16] As in any application, the burden of proof is on the applicant to produce evidence in support of the charge of contempt as set out in the statement filed by the applicants.

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[17] In this instance, the contempt proceedings were initiated in a civil action. Be that as it may, the contempt proceedings are quasi-criminal in nature because it involves the liberty of the alleged contemnor; if found guilty of contempt, the contemnor may be subject to a fine or a term of imprisonment. Accordingly, the charge of contempt must be proved beyond reasonable doubt (*Tan Sri Dato' (Dr) Rozali Ismail*; *Tan Sri G Darshan Singh v Tetuan Azam Lim & Pang* [2013] 5 MLJ 541; [2013] 1 CLJ 1060 (CA)). And where there is doubt, such doubt ought to be resolved in favour of the alleged contemnor (*Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal* [1995] 3 MLJ 549 (SC)).

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CONTEMPT PROCEEDINGS

F **[18]** Given that contempt proceedings involve the liberty of an individual, committal is a very serious matter. As such, the court must proceed very carefully before making an order to commit to prison. In this light, rules have been promulgated to ensure that the alleged contemnor knows clearly what is being alleged against him and is accorded every opportunity to meet the allegations. For instance, it is expressly provided that an order requiring a person to do an act shall not be enforced unless the order was served personally on the person before the expiration of the time within which he was required to do the act (O 45 r 7(2)(b)). Similarly, a body corporate is also required to be served with the order under sub-r (3).

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[19] In the event that safeguards such as these have not been observed in any particular case, then the process is defective even if no particular harm may have been done. For instance, if the notice of application for an order of committal together with a copy of the statement under O 52 r 3(2) has not been served personally on the alleged contemnor, the fact that the alleged contemnor knows all about it, and indeed attends the hearing of the proceedings, makes no difference (*In re B (JA) (an infant)* [1965] Ch 1112). Similarly, if the notice of application does not give the grounds of the alleged contempt or the affidavits are not served at the same time as the notice of

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application, that is a fatal defect, even though the alleged contemnor gets to know everything before the notice of application comes on, and indeed answers the affidavits (*Taylor v Roe* [1893] WN 14).

[20] There is, however, a distinction in principle between cases where there has been non-observance of some safeguard laid down in the interests of the alleged contemnor, and a mere technical irregularity. In instances where the court is called upon to consider mere verbal deficiencies in the documents in question; cases where documents do not comply strictly with the rules, but where it is impossible that in any conceivable case the alleged contemnor could be in any way prejudiced by the defects, then there is no reason why the courts should be any slower to waive such technical irregularities in a committal proceeding than they would in any other proceeding (see O 1A, O 2 rr 1, 2 and 3 of the ROC 2012).

OUR DECISION

[21] After carefully considering the submissions of learned counsel for the parties and on a scrutiny of the appeal record and the grounds of judgment of the learned judge, we are constrained to set aside the order of the learned judge. We did so for the following reasons.

No service

[22] In the first instance, the cause papers were not served on the appellant. The application for dispensation of service was only made by the respondent at the hearing of the committal application. In our view, it ought to have been made prior to the hearing date. If it had been made prior to the hearing of the application, then the cause papers could have been served by way of substituted service on the appellant so as to give the appellant due and proper notice of the proceedings. Further, there is nothing in the affidavit evidence or in the appeal record to indicate that the appellant was evading service of process. There is no such averment to that effect by the process server. As such the respondent has failed to establish that the appellant was evading service of process.

[23] We also note that according to the affidavit of service of the process server, he was only instructed to serve the committal papers on LMW (the plaintiff) and not on the appellant (see para 2 of the affidavit of service). He had gone to the appellant's law office for that purpose. He did not inform the clerk at the appellant's law office that he wanted to serve the cause papers on the appellant. He did not even ask for the appellant. Instead, he left the cause papers with the clerk. He did not ask the clerk to hand over the cause papers to

A the appellant. He then assumed that he had taken reasonable steps to serve the cause papers on the appellant and that service was proper (see para 4 of the affidavit of service).

B **[24]** In her grounds of judgment the learned judge made a finding that the appellant was at all material times aware of the committal proceedings and had '… studiously avoided being served personally with the cause papers which were finally served on his firm and received by his legal clerk …'. The learned judge also discounted the clerk's explanation that she placed the cause papers on her table for LMW's collection and that she did not give the cause papers to C the appellant. As such, the learned judge found that the appellant had constructive notice if not actual notice of the committal proceedings.

[25] In the first instance, there were no grounds warranting the granting of D dispensation of service under O 52 r 4(4) of the ROC. We reiterate that application for dispensation of service ought to have been made prior to hearing date and not on the hearing date itself. In the absence of any evidence showing that the appellant was evading service of process, the order for dispensation of service should not have been granted especially since the E application for dispensation was made so late and in a committal proceeding. We also do not see any reason being proffered by the respondent for the inordinate delay in making the application for dispensation of service.

[26] The fact that the appellant had knowledge of the contempt proceedings F makes no difference. The requirement for personal service of the cause papers on the appellant is a mandatory requirement. In our view this defect is fatal and by itself is a sufficient ground to warrant appellate intervention in setting aside the learned judge's order.

G *Defective charge*

[27] The learned judge accepted that the main thrust of the complaint in the affidavit in support was levelled against LMW. However, the learned judge found that from the cause papers and the fact that the appellant had H represented LMW in the various proceedings in different courts, the appellant cannot now deny his involvement in the matter. The learned judge also found that even if the respondent had not strictly complied with O 52, regard should be had to justice and not only to technical non-compliance with the rules pursuant to O 1A of the ROC 2012.

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[28] In our view, the question of whether the charge is defective turns on a construction of the notice of application, the O 52 statement and the respondent's affidavit in support. The notice of application contains a prayer for the appellant to be committed for abetting and assisting LMW in wilfully

and deliberately disregarding the 297 Order. However, neither the O 52 statement nor the affidavit in support filed by the respondent contained any particulars as to how, when and in what manner the appellant aided and abetted LMW in disregarding the 297 Order. In the O 52 statement, the only reference to the appellant by way of further relief is found in para 6. Apart from stating that the appellant was acting for LMW at all material times, the allegations peppered throughout the affidavit in support are not specific and devoid of the necessary facts as against the appellant. In such circumstance, we do not think that there is sufficient material to ensure that the appellant knows clearly what is alleged against him; as such that the appellant was not afforded every opportunity to answer the serious allegations levelled against him.

CONCLUSION

[29] For the foregoing reasons, we are of the view that the safeguards entrenched in the rules in committal proceedings have not been observed. Accordingly, we find that the process defective and that appellate intervention is warranted. Accordingly, we set aside the order of the high court and allowed the appeal with costs of RM5,000 subject to payment of allocator.

Order of High Court set aside; appeal allowed with costs of RM5,000 subject to payment of allocator.

Reported by Mohd Kamarul Anwar